

FCC MAIL SECTION

Federal Communications Commission

DA 98-1863

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DISPATCHED  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 ) CC Docket No. 98-168  
Bell Atlantic Telephone Companies )  
Tariff No. 1 )  
Transmittal No. 1076 )

### ORDER SUSPENDING TARIFF AND DESIGNATING ISSUES FOR INVESTIGATION

Adopted: September 15, 1998

Released: September 15, 1998

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

#### I. INTRODUCTION

1. On September 1, 1998, the Bell Atlantic Telephone Companies (Bell Atlantic) filed Transmittal No. 1076 establishing a new offering, Infospeed DSL Service, to become effective September 16, 1998.<sup>1</sup> Bell Atlantic describes its digital subscriber loop (DSL) offering as an interstate data special access service that provides a high speed access connection between an end user subscriber and an Internet Service Provider (ISP) by utilizing a combination of the subscriber's existing local exchange physical plant (*i.e.* copper facility), a specialized DSL-equipped wire center, and transport to the Asynchronous Transfer Mode Cell Relay Service (ATM) where the ISP will connect to Bell Atlantic's network.<sup>2</sup> Infospeed DSL Service will reduce the congestion on the public switched network by diverting data traffic from the voice network to dedicated data connections, according to Bell Atlantic.<sup>3</sup>

2. We find that petitions to suspend and investigate Bell Atlantic's Transmittal No. 1076 raise substantial questions of lawfulness that warrant investigation of this tariff. Accordingly, Bell Atlantic's Transmittal No. 1076 is suspended for one day, following the effective date. This transmittal will also be subject to an accounting order to facilitate any refunds that may later prove to be necessary. In this Order, we designate for investigation under section 204(a) of the Communications Act of 1934, as amended (the Act) the question of whether Bell Atlantic's DSL service offering constitutes an interstate access service, and thus is subject to the Commission's jurisdiction.

<sup>1</sup> Bell Atlantic Transmittal No. 1076. The following parties filed petitions to reject, or petitions to suspend and investigate, Bell Atlantic's Transmittal No. 1076: Northpoint Communications (Northpoint); Sprint Corporation (Sprint); Hyperion Communications Inc., ICG Communications, Inc., ITC^Delta Communications, Inc., and KMC Telecom Inc (collectively "Hyperion"); and Commercial Internet Exchange Association (CIX).

<sup>2</sup> Bell Atlantic Transmittal No. 1076, Description and Justification at 1.

<sup>3</sup> *Id* at 1-2.

## II. DISCUSSION

### A. Background

3. Bell Atlantic's Transmittal No. 1076 seeks to offer DSL service through an interstate access tariff.<sup>4</sup> Bell Atlantic contends that an interstate tariff is appropriate because: (1) Internet traffic is primarily interstate in nature; (2) Bell Atlantic's DSL service offering involves dedicated transport of data; and (3) Bell Atlantic's DSL service is an access service under section 69.2 of the Commission's rules.<sup>5</sup> The Commission has not substantively addressed the lawfulness of a DSL service in the context of an interstate tariff such as that filed by Bell Atlantic.<sup>6</sup>

### B. Petition

4. Hyperion argues that Bell Atlantic's DSL service is an intrastate service offering that should be tariffed at the state level.<sup>7</sup> Hyperion contends in its petition that twenty-one states have already held that traffic from an end user to an ISP is local, and that Bell Atlantic's tariff is an attempt to forum shop to avoid these decisions.<sup>8</sup> Specifically, Hyperion maintains that these states have held that incumbent local exchange carriers (ILECs) must pay reciprocal compensation<sup>9</sup> when they exchange this type of traffic with competitive local exchange carriers (CLECs).<sup>10</sup>

5. Hyperion contests Bell Atlantic's characterization of the service as an access service.<sup>11</sup> Hyperion argues that, in order for a service to be classified as an access service, the service must be an

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> 47 C.F.R. § 69.2(b); Bell Atlantic, Description and Justification at 2.

<sup>6</sup> We note that the Commission recently released a designation order designating the issue of whether Bell GTE's DSL service may be tariffed as an interstate access service. *GTE Telephone Operators GTOC Transmittal No. 1148*, Order Designating Issues for Investigation, CC Docket No. 98-79, DA 98-1667 (Com. Car. Bur., rel. August 20, 1998) (*GTOC Designation Order*). See also, *BellSouth Telecommunications, Inc. Transmittal No. 476*, Order Suspending Tariff and Designating Issues for Investigation, CC Docket No. 98-161, DA 98-1734 (Com. Car. Bur., rel. September 1, 1998); *Pacific Bell Telephone Company Transmittal No. 1986*, Order Designating Issues for Investigation, CC Docket No. 98-103, DA 98-1772 (Com. Car. Bur., rel. September 2, 1998); and *GTE System Telephone Companies Transmittal No. 260*, Order Suspending Tariff and Designating Issues for Investigation, CC Docket No. 98-167, DA 98-1838 (Com. Car. Bur., rel. September 11, 1998).

<sup>7</sup> See Hyperion Petition at 3-4.

<sup>8</sup> *Id.*

<sup>9</sup> Reciprocal compensation is an arrangement between two carriers that "provide[s] for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C. § 252(d)(2)(A)(i). See also 47 U.S.C. § 251(b)(5) (requiring LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications).

<sup>10</sup> Hyperion Petition at 1-2.

<sup>11</sup> *Id.*

offering of access to telephone exchange services or facilities for the purpose of origination and termination of telephone toll service.<sup>12</sup> Hyperion contends that, because the service provided by ISPs is not telephone toll service, Bell Atlantic's DSL service will not terminate in a telephone toll service and therefore is not an access service.<sup>13</sup>

6. Northpoint raises another jurisdictional argument by contending that data CLECs could be subject to a price squeeze unless regulators review both Bell Atlantic's retail DSL rates and Bell Atlantic's wholesale charges for unbundled network elements (UNEs) used by competitors to provide their own DSL services.<sup>14</sup> Northpoint argues that the Commission does not have the UNE cost data needed to conduct the necessary analysis because UNEs are tariffed at the state level, while Bell Atlantic is tariffing retail DSL services at the federal level.<sup>15</sup> This allows, according to Northpoint, the possibility that cost data submitted at the federal level will be significantly different than the cost data submitted at the state level.<sup>16</sup> Northpoint, therefore, argues that the Commission should consider deferring the retail tariffing of DSL services to the states, to ensure consistent tariff review.<sup>17</sup>

### C. Reply

7. Bell Atlantic's Reply contends that its DSL service will serve the public interest by offering accelerated Internet access service and by alleviating congestion in the public circuit-switched telephone network by diverting Internet traffic to a separate packet-switched data network.<sup>18</sup> Bell Atlantic further contends that its DSL service is properly tariffed at the federal level, and that state jurisdiction over DSL service would impede Congress's policy objective to promote advanced telecommunication.<sup>19</sup> Bell Atlantic supports this latter point by arguing state jurisdiction would subject its service to "duplicative, and potentially protracted, tariff proceedings in the state, and by subjecting this single inseverable service to multiple and potentially conflicting requirements from the Commission and various state commissions."<sup>20</sup>

### D. Discussion

8. The threshold issue raised by Bell Atlantic's tariff and petitioners is whether Bell Atlantic's DSL service offering is an interstate service, properly tariffed at the federal level, or an intrastate service

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<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> Northpoint Petition at 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Bell Atlantic Reply at 2.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.*

that should be tariffed at the state level. We find that the record in this proceeding to date does not contain sufficient information on which to decide this issue. We, therefore, designate for investigation the question whether Bell Atlantic's DSL service offering is a jurisdictionally interstate service. We solicit comments on the jurisdictional issues raised by Bell Atlantic's DSL service offering and whether it should be tariffed at the state or federal level. We also solicit comments on whether the Commission should defer to the states the tariffing of retail DSL services in order to lessen the possibility of a price squeeze.<sup>21</sup>

### III. Filing Schedules

9. This investigation will be conducted as a notice and comment proceeding. We have designated CC Docket No. 98-168. Bell Atlantic is designated as a party to this proceeding, and shall file its direct case no later than October 6, 1998. The direct case must present the party's positions with respect to the issues described in this Order. Pleadings responding to the direct case may be filed no later than October 15, 1998, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Bell Atlantic may file a "Rebuttal" to oppositions or comments no later than October 22, 1998.

10. An original and six copies of all pleadings shall be filed with the Secretary of the Commission. In addition, parties shall file two copies of any such pleadings with the Competitive Pricing Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. 20554. Parties shall also deliver one copy of such pleadings to the Commission's commercial copying firm, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036. Members of the general public who wish to express their views in an informal manner regarding the issues in this investigation may do so by submitting one copy of their comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Such comments should specify the docket number of this investigation. Parties are also encouraged to submit their pleadings electronically through the Electronic Tariff Filing System.

11. All relevant and timely pleadings will be considered by the Commission. In reaching a decision, the Commission may take into account information and ideas not contained in pleadings, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of reliance on such information is noted in the order.

### IV. Ex Parte Requirements

12. This tariff investigation is a "permit-but-disclose proceeding" and subject to the "permit-but-disclose" requirements under section 1.1206(b) of the rules, 47 C.F.R. § 1.1206(b), as revised. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>22</sup> Other rules pertaining to oral and written presentations are set forth in section 1.1206 (b), as well.

### V. Paperwork Reduction Act

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<sup>21</sup> See also GTOC Designation Order at ¶¶ 7,12.

<sup>22</sup> See 47 C.F.R. §1.1206 (b)(2), as revised.

13. The collections of information contained within are contingent upon approval by the Office of Management and Budget, in accordance with the provisions of the Paperwork Reduction Act, 44 U.S.C. §§ 3506 *et seq.*

## VI. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and authority delegated pursuant to Section 0.91 and Section 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, Transmittal No. 1076 **IS SUSPENDED** for one day from the effective date and an investigation of the referenced tariff transmittal **IS INSTITUTED**.

15. **IT IS FURTHER ORDERED** that Bell Atlantic **SHALL FILE** tariff revisions within five business days of the release date of this Order to reflect this suspension.

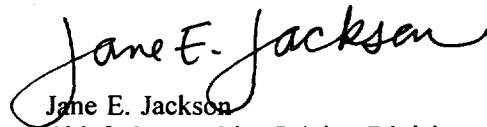
16. **IT IS FURTHER ORDERED** that, for the above purposes, Bell Atlantic should cite the "DA" number of the instant Order as the authority for this filing.

17. **IT IS FURTHER ORDERED** that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), Bell Atlantic shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

18. **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205 and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, the issues set forth in this Order **ARE DESIGNATED FOR INVESTIGATION**.

19. **IT IS FURTHER ORDERED** that Bell Atlantic is a party to this proceeding and **SHALL INCLUDE**, in its direct case, a response to each issue designated in this Order.

FEDERAL COMMUNICATIONS COMMISSION



Jane E. Jackson  
Chief, Competitive Pricing Division  
Common Carrier Bureau